

This is a claim for a March 23, 1998 accident and alleged injuries to the claimant's right arm, shoulder and neck. The Judge found that of all the numerous physicians that have treated and/or examined claimant, Dr. Pedro A. Murati was the only one to find permanent impairment beyond the claimant's right upper extremity and was the only physician to determine that claimant suffered a general body disability from the work-related accident. The Judge determined that claimant's permanent partial disability was a 10

percent scheduled injury to the right upper extremity and awarded benefits using the 225 weeks provided for loss of use at the shoulder level.

Claimant contends the Judge erred by limiting claimant's award to a scheduled injury and argues for an award based upon a much higher work disability.

The only issues before the Appeals Board on this review are:

1. Did claimant's March 23, 1998 accident result in permanent impairment to his right upper extremity and shoulder only?
2. If not, and claimant sustained a general body disability, what is the nature and extent of his permanent partial general disability?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. On March 23, 1998, claimant injured his right arm and shoulder when he slipped on a wet floor and fell. The injury occurred while claimant was working for respondent's El Dorado Correctional Facility.
2. Claimant saw numerous doctors for his injury, including Dr. H. Richard Kuhns who diagnosed a possible reflex sympathetic dystrophy (RSD) and referred claimant to Dr. Vivian A. Illera and also to board certified orthopaedic surgeon Robert L. Eyster, M.D. Dr. Eyster did not diagnose RSD, but sent claimant for a consult with Dr. James R. Hay, an expert in RSD. Dr. Hay likewise did not agree with the RSD diagnosis.
3. Dr. Vivian A. Illera is board certified in internal medicine and rheumatology. She first saw claimant on May 6, 1998 on a referral from Dr. Kuhns. Claimant did not complain of neck pain but did mention headaches over the past month and some muscle spasms about the right shoulder and upper arm. Dr. Illera did not see clear evidence of RSD, but claimant did have subjective complaints of myofascial pain. The physical examination was unremarkable and she diagnosed right arm pain after a fall by patient history. She recommended claimant avoid repetitive motion and heavy lifting. When Dr. Illera next saw claimant on July 15, 1998 he had suddenly developed pain in the scapular area and claimant had noted discoloration of his right arm which had resolved. She was not convinced this was RSD but she wanted her impression confirmed by someone in orthopedics.
4. Dr. Eyster first saw claimant on July 24, 1998 and diagnosed a rotator cuff strain. Claimant's condition was essentially unchanged when Dr. Eyster saw claimant again on August 7, 1998, but on August 27, 1998 the doctor found discoloration with dependency in

claimant's hand and referred claimant to Dr. Hay for an evaluation of possible RSD. Dr. Eyster did not find thoracic outlet syndrome and found no objective findings for permanent impairment. On October 12, 1998 Dr. Eyster, or possibly his physician's assistant, released claimant to return to work.

5. At his attorney's request, claimant was evaluated by Dr. Pedro A. Murati, a physician who specializes in physical medicine and rehabilitation. Dr. Murati saw claimant twice, on November 30, 1998 and in May 1999. He diagnosed right rotator cuff tear, brachial plexopathy with a component of RSD and possible right thoracic outlet syndrome. Dr. Murati subsequently described the right rotator cuff as a strain. His final diagnosis was:

"Brachial plexopathy with component of RSD on the right; right rotator cuff strain; right thoracic outlet syndrome; and cervical strain secondary to the RSD of the right upper extremity with myofascial pain affecting the right shoulder girdle musculature."

Dr. Murati determined that claimant was not at maximum medical improvement but nevertheless rated claimant's functional impairment as a 4 percent functional impairment to the body as a whole for the cervical strain, 20 percent of the right upper extremity for RSD and brachial plexopathy, and 2 percent to the right upper extremity for loss of shoulder range of motion, which combined to a 16 percent whole body disability.

6. Dr. Murati's opinion was the only medical opinion that claimant had thoracic outlet syndrome and he was also the only physician that found claimant had an impairment to his neck from the March 1998 accident. Recognizing that an independent medical evaluation was appropriate, the Judge issued an order for Dr. Philip R. Mills, a board-certified physical medicine and rehabilitation physician, to conduct an independent medical evaluation.

7. Pursuant to the Judge's Order, Dr. Mills examined claimant on January 22, 1999, March 29, 1999 and again on April 29, 1999. He diagnosed (1) right rotator cuff strain, (2) mild chronic regional pain syndrome with possible reflex sympathetic dystrophy, and (3) myofascial component to pain syndrome and injury. Based upon the examination and a review of claimant's medical records, including the MRI studies done before the March 29, 1999 exam, Dr. Mills found claimant had tendinitis in the right shoulder, but did not find any impairment in claimant's neck. Using the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment, Dr. Mills rated claimant as having a 10 percent functional impairment to the right upper extremity based on tendinitis.

8. Dr. Mills concluded that the RSD diagnosis was a possibility but was not a probability. It appears that only Dr. Murati is convinced that claimant has RSD. The Appeals Board is persuaded by the opinions of Dr. Mills, who testified as an unbiased expert witness, that claimant's injuries are limited to the right upper extremity and shoulder. Therefore, the Appeals Board concludes that claimant has sustained a 10 percent functional impairment

to the right upper extremity to the level of the shoulder as a result of the March 23, 1998 accident.

CONCLUSIONS OF LAW

1. The Award should be affirmed to award claimant permanent partial disability benefits for a scheduled injury for a 10 percent functional impairment to the right upper extremity including the shoulder.
2. The Workers Compensation Act provides that a worker is entitled to receive a maximum of 225 weeks of permanent partial disability benefits for a shoulder injury.¹ As provided by regulation,² the number of weeks of temporary total disability benefits that are due (44.29) is subtracted from 225 and the resulting number is then multiplied by the functional impairment rating (10 percent). That computation yields 18.07 weeks of permanent partial disability compensation that claimant is entitled to receive in this claim.
3. Because claimant did not suffer a general body disability from the March 1998 accident, the Appeals Board does not reach the issue of work disability.

AWARD

WHEREFORE, the Appeals Board affirms the January 14, 2000 Award entered by Administrative Law Judge Jon L. Frobish and awards claimant permanent partial disability benefits for a 10 percent functional impairment to the right upper extremity at the shoulder level.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

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¹ K.S.A. 44-510d(a)(13).

² K.A.R. 51-7-8.

c: Timothy A. Emerson, Wichita, KS
John C. Nodgaard, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director